

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	Case No. 3:03cr141
	:	Case No. 3:08cv439
vs.	:	
	:	JUDGE WALTER HERBERT RICE
JOHN H. MAGUIRE,	:	
	:	
Defendant.	:	

DECISION AND ENTRY OVERRULING DEFENDANT'S OBJECTIONS (DOC. #205) TO THE REPORT AND RECOMMENDATIONS OF THE MAGISTRATE JUDGE (DOC. #203); REPORT AND RECOMMENDATIONS (DOC. #203) ADOPTED; CERTIFICATE OF APPEALABILITY AND *IN FORMA PAUPERIS* STATUS ON APPEAL DENIED; JUDGMENT TO BE ENTERED IN FAVOR OF PLAINTIFF AND AGAINST DEFENDANT; TERMINATION ENTRY

Based upon the reasoning and citations of authority set forth in the Report and Recommendations of the United States Magistrate Judge (Doc. #203), the Court overrules the Defendant's Objections (Doc. #205) to that judicial filing. In addition, the Court adopts the Magistrate Judge's Report and Recommendations (Doc. #203). As the Sixth Circuit noted during Defendant's direct appeal, his claim of ineffective assistance of counsel is speculative, at best. This Court, having conducted a *de novo* review of the papers he has filed herein, concludes that said claim remains so.

Indeed, as the Magistrate Judge noted, the Defendant's allegations of ineffective assistance of counsel cannot be accepted as true, because they inherently incredible and conclusions rather than statements of fact. For instance, he does not identify how he knows that the attorney who represented him when he entered a guilty plea and the judicial officer who took that guilty plea conspired to deny him his right to effective assistance of counsel, so as to prevent him from discovering that his brother is a police informant. Moreover, much of his claim of ineffective assistance of counsel is predicated on events that occurred nearly 30 years ago in Los Angeles, when Defendant alleges that he acted as a police informant against his brother's drug trafficking activities. According to Defendant, his brother entrapped him in this prosecution, as an act of revenge. However, as the Sixth Circuit has noted Defendant has not "specifically identified what the brother said or did to effectuate [an inducement to commit the offenses of conviction]." See Doc. #190 at 2-3.

Unable to find that "reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong" (*Slack v. McDaniel*, 529 U.S. 473, 484 (2000)), the Court denies the Defendant a certificate of appealability and *in forma pauperis* status on appeal. Judgment is to be entered in favor of the Plaintiff and against Defendant.

The captioned cause is hereby ordered terminated upon the docket records of the United States District Court for the Southern District of Ohio, Western Division, at Dayton.

March 31, 2010

/s/ Walter Herbert Rice

WALTER HERBERT RICE, JUDGE
UNITED STATES DISTRICT COURT

Copies to:

Counsel of Record.